

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal)	
Service)	CC Docket No. 96-45
)	
PETITION OF AT&T WIRELESS)	
SERVICES, INC. For Designation as an)	File No. DA-999
Eligible Telecommunications Carrier Pursuant)	
to Section 214(e)(6) of the Communications)	
Act, FCC 97-419)	

**REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC. IN SUPPORT OF ITS
PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER IN THE STATE OF ALABAMA**

AT&T Wireless Services, Inc., for itself and on behalf of its subsidiary licensees, AirCom PCS, Inc., Tritel C/F Holding Corp., Tritel A/B Holding Corp., AT&T Wireless PCS, LLC, and QuinCom, Inc. (collectively, "AWS"), respectfully submits its Reply to the Comments of Gulf Telephone Company ("Gulf") in the above-captioned proceeding, which concerns AWS' Supplement to its previously filed Petition for designation as a competitive federal eligible telecommunications carrier ("ETC") in requested service areas in the State of Alabama. Gulf's Comments consist almost entirely of broad policy arguments that are clearly not before the Commission in this proceeding. The only arguments made by Gulf that relate to AWS' Supplement are vague, unsupported and incorrect assertions that ignore the Commission's directives in *Virginia Cellular*.¹ These arguments should be rejected, and the Commission should proceed to designate AWS as a competitive ETC as requested.

¹ *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of*

I. GULF’S BROAD POLICY CONCERNS DO NOT JUSTIFY HOLDING AWS’ PETITION IN ABEYANCE

Gulf’s primary argument in its Comments is that action on AWS’ Petition should be deferred “until the Commission has resolved outstanding ETC designation issues – including critical issues affecting the Universal Service Fund raised in the pending *Recommended Decision* of the Federal-State Joint Board on Universal Service.” (Gulf Comments, p. iii.) In essence, Gulf asks the Commission to ignore the following:

- 47 U.S.C. § 214(e)(6), which requires the Commission to act on designation requests filed by common carriers seeking to serve as competitive ETCs;
- The *Twelfth Report and Order* in Docket 96-45, in which the Commission committed to attempt to resolve ETC designation petitions within a six-month time frame, recognizing that “excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas.” *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 (2000);
- The Commission’s statement in *Virginia Cellular* that: “While we await a recommended decision from the Joint Board, we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone

Virginia, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338 (rel. Jan. 22, 2004) (“*Virginia Cellular*”).

company service areas. The framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission;² and

- The Commission's Public Notice, in which it directed that pending Petitions, including this one, would be evaluated consistent with the standards set forth in the *Virginia Cellular* and *Highland Cellular* decisions.³

While it is true that the Commission has considered and will continue to consider broad policy issues, it is neither appropriate nor lawful to reserve high-cost and low-income universal service funds to incumbent carriers while this occurs. AWS respectfully requests that the Commission take the action to which it has committed and proceed to move forward expeditiously to consider and grant AWS' Petition.

II. GULF'S ASSERTIONS OF HARM ARE UNSUPPORTED

Gulf makes several factual assertions regarding AWS' Petition that are either unsupported by the record, or are simply inaccurate. First, Gulf points out that multiple carriers seek designation in Alabama and suggests that "economies of scale may not support any competition at all." (Gulf Comments, p. 4.) Gulf provides no evidence of any kind regarding the Gulf service area, and certainly provides no data that would support any findings regarding the ability of its service area to support multiple ETCs. The Commission has previously recognized that opposing ILECs bear the burden of supporting such claims with specific evidence, and

² *Virginia Cellular*, ¶ 4 (emphasis added).

³ See PUBLIC NOTICE, *Parties are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45, DA 04-999 (rel. April 12, 2004).

cannot rely on mere assertions.⁴ Because Gulf has offered no evidence to support this claim, it must be disregarded.⁵

Second, Gulf suggests that AWS' designation would have an adverse impact because Gulf serves a "popular vacation spot." (Gulf Comments, p. 10.) Gulf suggests there is some public harm caused if "snow birds" use their AWS phones while on vacation in Gulf's study area. This argument suggests Gulf misunderstands how federal universal service funds are distributed to competitive ETCs. As the Commission is aware, if designated as a competitive ETC, AWS would become eligible to receive federal universal service support only for customers with billing addresses within its designated service areas in Alabama.⁶ That means that if AWS has a customer living in Chicago who travels to Gulf Shores, Alabama and uses AWS' network in that area, AWS would receive no federal support for that customer.⁷ AWS would be providing service to this consumer in a high-cost area without being eligible to receive universal service support. Because AWS would receive support only for customers with billing addresses in the Gulf study area, universal service funds are indeed tied to AWS' provision of

⁴ The Commission noted in designating RCC Holdings as an ETC in Alabama: "The parties opposing this designation have not presented persuasive evidence to support their contention that designation of an additional ETC in the rural areas at issue will reduce investment in infrastructure, raise rates, reduce service quality to consumers in rural areas or result in loss of network efficiency." *In the Matter of Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 02-3181, ¶ 26 (rel. Nov. 27, 2002) ("RCC Holdings Order").

⁵ Gulf's statement that its Zone 2 exchanges contain 41 access lines is less compelling evidence than that which was rejected in the *RCC Holdings Order*. *RCC Holdings Order*, ¶ 26 fn. 90 (density of 6.8 households per square mile).

⁶ 47 C.F.R. § 54.307.

⁷ Gulf, on the other hand, already receives an advantage in this regard, as it today receives universal service support for costs incurred to serve "snow birds" or other vacationers. There is no justification for the additional adverse treatment proposed by Gulf.

service to residents in those areas. Gulf's argument on this point is misguided and should therefore be rejected.

III. AWS' COMMITMENTS ARE COMPARABLE TO THOSE ENDORSED BY THE COMMISSION IN *VIRGINIA CELLULAR*

AWS' Supplement to its Alabama ETC Petition sets forth in detail how it satisfies the standards set forth in the Commission's *Virginia Cellular* decision. The only real opposition raised by Gulf is its claim that AWS has failed to demonstrate a commitment to serve sparsely populated portions of rural service areas. (Gulf Comments, p. 9.) This is incorrect. AWS has nearly complete coverage today, and commits to offering the supported services throughout the Gulf study area. AWS further anticipates that its coverage will be enhanced and expanded over time, which will benefit consumers throughout these high-cost areas. Unlike *Virginia Cellular*, which was required to build facilities to serve 157,000 people within its service area,⁸ AWS has limited its application to areas where it has substantially complete coverage today. (AWS Supplement, p. 3.) AWS' current coverage, its commitment to offer services throughout this area, its commitment to address service extension consistent with the *Virginia Cellular* decision, and its strength as a national carrier clearly support a finding that AWS will meet the obligations of an ETC to offer services throughout Gulf's study area.

CONCLUSION

For the reasons set forth in its Petition, its Supplement, and as discussed above, AWS respectfully requests that the Commission designate it as an ETC in its requested service areas in Alabama.

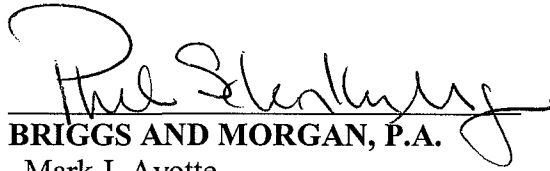
⁸ *Virginia Cellular*, ¶ 16.

Dated: June 4, 2004

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

Douglas I. Brandon
Vice President, Federal Affairs
1150 Connecticut Avenue, N.W., Fourth Floor
Washington, D.C. 20036
Telephone: (202) 223-9222
Facsimile: (202) 223-9095
doug.brandon@attws.com



BRIGGS AND MORGAN, P.A.

Mark J. Ayotte
Philip R. Schenkenberg
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone: (651) 808-6600
Facsimile: (651) 808-6450
mayotte@briggs.com

*ATTORNEYS FOR AT&T WIRELESS
SERVICES, INC.*

CERTIFICATE OF SERVICE

I, Philip R. Schenkenberg, do hereby certify that I have on this 4th day of June, 2004 served a true and correct copy of the foregoing REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC. IN SUPPORT OF ITS PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF ALABAMA on the following:

Richard Smith
Accounting Policy Division
Federal Communications Commission
445 12th Street SW
Room 5-A660
Washington, D.C. 20554

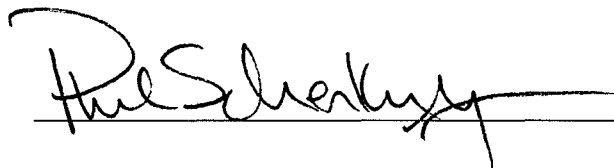
Paul Garnett, Esq.
Wireline Competition Bureau
Telecommunications Access Policy Division
Federal Communications Commission
445 12th Street SW
Room 5-C-315
Washington, D.C. 20554

Karen Franklin
Wireline Competition Bureau
Telecommunications Access Policy Division
445 12th Street SW
Room 4-C-405
Washington, D.C. 20554

Sheryl Todd (3 copies)
Wireline Competition Bureau
Telecommunications Access Policy Division
445 12th Street SW
Room 5-B-540
Washington, D.C. 20554

Walter L. Thomas, Jr.
Secretary
Alabama Public Service Commission
RSA Building
100 North Union Street
Suite 850
Montgomery, Alabama 36101

Leah S. Stephens
Mark D. Wilkerson
Wilkerson & Bryan, P.C.
405 South Hull Street
Montgomery, Alabama 36104

A handwritten signature in black ink, reading "Philip R. Schenkenberg", written over a horizontal line.

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